

- **Statutory Authority:** 7 U.S.C. 6991 et. seq., Title II of the Federal Crop Insurance Reform and Department of Agriculture Reorganization Act of 1994. The regulation has been codified in the Federal Register at 7 CFR 614.
 - **Provisions:** an NRCS conservation program participant who has received an adverse program decision or technical determination may be able to request reconsideration, mediation, or appeal of the decision.
 - **Definitions:**
 - **Adverse program decisions and technical determinations:** an adverse program decision or technical determination must specify the regulations and generally applicable interpretations of regulations and must specify the factual basis for the decision or technical determination.
 - **Alternative dispute resolution (ADR) procedures:** Mediation is the form of ADR expressly made part of the agency appeals process and the regulations incorporate additional specific guidelines for the mediation of program disputes that have, to date, been operative as generally applicable agency policy.
 - **Appeal** means a written request by a participant asking for review of an NRCS technical determination or program decision within NRCS, through FSA as applicable, or a request to NAD.
 - **Appealable and non-appealable decision and determinations:** Program decisions or technical determinations made pursuant to statutory provisions or implementing regulations that are not dependent upon a unique set of facts are generally not appealable.
- Any decision based on a general program provision or program policy, or on a statutory or regulatory requirement that is applicable to all similarly situated participants, or on technical standards and equations is not appealable under the rules.
- **Appealability review:** means review of whether a program decision or technical determination is not appealable due to being a matter of general program applicability or is adverse to the individual participant, and thus appealable.
 - **Expedited finality:** means a technical determination made final whereby the landowner or programs participant has waived their rights to request either a field review or mediation during the preliminary informal appeals stage.
 - **FSA County Committee appeals:** subsequent consideration by a county committee established under Section 8(b)(5) of the Soil Conservation and Domestic Allotment Act (16 U.S.C. § 590h(b)(5)) of an NRCS technical determination made under Title XII of the Food Security Act of 1985, as amended.
 - **Reconsideration:** subsequent consideration by the same level decision maker or reviewing authority. Reconsideration affords a means to clarify both the Agency's and the participants' mutual understandings of the applicable program regulations.
 - **State Conservationist appeals:** subsequent consideration by the State Conservationist of an NRCS technical determination or a program decision issued in programs administered by NRCS authorized by a statute other than Title XII of the Food Security Act of 1985.

Appeals of Title XII Conservation Programs

- **Title XII Conservation Programs:**
 - Conservation Reserve Program (CRP)
 - Conservation Reserve Enhancement Program (CREP)
 - Conservation Security Program (CSP)
 - Environmental Quality Incentives Program (EQIP)
 - Conservation Innovation Grants (CIG)
 - Conservation Partnership Initiative (CPI)
 - Farm and Ranch Lands Protection Program (FRPP)
 - Grassland Reserve Program (GRP)
 - Wildlife Habitat Incentives Program (WHIP)
 - Wetlands Reserve Program (WRP)
- **Preliminary Technical Determinations:**
 - NRCS will issue a *Preliminary Technical Determination* that will become final 30 calendar days from the date that the written notice has been received, unless the program participant arranges with the NRCS official for any or all of the following options:
 - Field visit to the site for the purposes of gathering additional information and discuss facts.
 - Reconsideration by the NRCS decision-maker.
 - Mediation.
 - Expedited finality of the preliminary technical determination.
- **Final Technical Determinations** for programs and regulatory requirements that are jointly administered by NRCS and FSA or solely administered by FSA shall be appealed according to the following:
 - Mandatory appeal to the FSA county committee as set forth in 7 CFR 614 and 7 CFR 780. Landowners or program participants wishing to appeal must exhaust any available appeal procedures through the FSA county committee prior to appealing to NAD.
 - Appeal to the FSA State committee, if applicable as set forth 7 CFR 780.
 - Appeal to NAD.
 - Mediation under the guidelines specified in 7 CFR 614 and 7 CFR 780.

- **Final Technical Determinations or Program Decisions** for programs and regulatory requirements that are administered by NRCS or by NRCS on behalf of CCC:
 - Optional appeal to the FSA county committee.
 - Appeal to NAD.
 - Mediation.

Appeals of Non-Title XII Conservation Programs

- **Non-Title XII Conservation Programs:**
 - Agricultural Management Assistance (AMA)
 - Conservation Technical Assistance (CTA)
 - Emergency Watershed Protection Program (EWP) Floodplain Easements
 - Flood Prevention & Watershed Protection Program (FPWPP) Land Treatment Contracts
 - Resource Conservation & Development (RC&D)
 - Soil & Water Conservation Assistance (SWCA)
- **Final Program Decisions** for programs and regulatory requirements that are administered by NRCS:
 - Appeal to the State Conservationist in the State where the decision originated.
 - Reconsideration by the State Conservationist.
 - Appeal to NAD.
 - Mediation.

Reconsideration or Alternative Dispute Resolution:

- A request for reconsideration must be submitted in writing.
- A request for alternative dispute resolution (ADR), including the use of early intervention techniques, may be requested by either the program participant or the agency in an effort to provide an alternative to the traditional appeals process for resolution of questions, concerns, or conflicts and to ensure a greater understanding of the underlying rules, regulations, and agency administrative procedures that go into making technical determinations and program decisions.

- A decision on reconsideration or alternative dispute resolution (ADR) is a new decision that restarts applicable time limitation periods.

Decisions or Technical Determinations Not Subject to Appeal:

- Any general program provision or program policy or any statutory or regulatory requirement that is applicable to all similarly situated participants, such as:
 - Program application ranking criteria.
 - Program application screening criteria.
- Mathematical or scientific formulas established under a statute or program regulation and a program decision or technical determination based solely on the application of those formulas.
- Decisions made pursuant to statutory provisions or implementing regulations that expressly make agency program decisions or technical determinations final.
- Science-based formulas and criteria.
- Procedural decisions relating to administration of the programs.
- Decisions on equitable relief made by a State Conservationist or the Chief pursuant to Section 1613 of the Farm Security and rural Investment Act of 2002, Pub. L. 107-171.
- Decisions of other Federal or State agencies.
- Requirements and conditions designated by law to be developed by agencies other than NRCS.
- Disapproval or denials of assistance due to lack of funding or lack of authority.

Appealability Reviews:

The appealability of decisions rendered by NRCS under this part may be reviewed by NAD under the rules set forth in 7 CFR 11, Section 11.6.

Time limitations:

- NRCS will provide the participant written notice of the adverse decision and of applicable appeal rights no later than 10 business days after an agency decision maker renders an adverse decision.
- A participant may request an appealability review of an agency decision that is determined not to be appealable by submitting a written

request for an appealability review to the National Appeals Division (NAD).

- A participant requesting reconsideration, mediation, or appeal must submit a written request as instructed in the notice of decision to be received by NRCS no later than 30 calendar days from the date that the participant received the agency's adverse decision notification (no more than 37 days from the date of the agency's notification (30 calendar days plus no more than seven days for processing through the U.S. Postal Service)).

Judicial Review:

- A participant cannot seek judicial review of a final decision issued by NRCS without receiving a final determination from NAD pursuant to 7 CFR part 11.
- A participant may not seek judicial review of the decision of the NRCS Chief or a State Conservationist on equitable relief made under Section 1613 of the Farm Security and Rural Investment Act of 2002, Pub. L. 107-171.

For More Information:

If you need more information about Conservation Program Appeals or Mediation, please contact your local USDA Service Center, listed in the telephone book under U.S. Department of Agriculture, or your local conservation district. Information also is available on the World Wide Web at the following web addresses:

- <http://www.nrcs.usda.gov/programs/appeals/>
- <http://www.nrcs.usda.gov/programs/mediation/>
- <http://www.nad.usda.gov/>
- http://policy.nrcs.usda.gov/scripts/lpsiis.dll/M/M_440_509.htm

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